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**EXTRAORDINARY**

**PART I—Section 1**

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**No. 459C] NEW DELHI, THURSDAY, NOVEMBER 13, 1952**

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 13th November, 1952*

**No. 19/326/52-Elec.III.**—WHEREAS the election of the persons named in the Schedule to the Commission's notification No. 19/326/52-Elec.III, dated the 18th August, 1952, as members of the Council of States, by the elected members of the Madras Legislative Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri K. Subrahmanyam of No. 122, San Thome High Road, Mylapore, Madras;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

**BEFORE THE ELECTION TRIBUNAL, MADRAS.**

*Saturday the 8th day of November 1952*

Present:—Sri K. B. Venkatachala Ayyar, ... *Chairman.*

Sri Syed Imamuddin, ...  
and ... } *Members.*  
Sri K. Chandrasekharan ... }

*Election Petition No. 326/1952.*

Sri K. Subramanyam ... *Petitioner.*

*Vs.*

Sri Abdul Hameed Khan and others ... *Respondents.*

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This petition coming on for hearing on the 3rd and 4th November, 1952, in the presence of Mr. V. G. Rao, Advocate for the Petitioner, Messrs. N. Rajagopala Iyengar and R. Narayanan, Advocates for the 46 Respondent Mr. P. Satyanarayana Raju, Government Pleader, for Respondent 8, Mr. R. D. Indrasenan, Advocate for Respondents 27 and 36, Messrs. M. Ranganatha Sastri and P. T. Krishna Iyer

for Respondent 4, and Respondents 12, 22 and 28 appearing in person and the rest remaining experts and upon hearing the arguments on both sides, and the petition having stood over till this day for final orders, the Tribunal delivered the following Order:—

### ORDER

The facts of this case are very simple and are not in dispute. Sri K. Subramanyam, the petitioner, was one of the candidates for the election of 27 members of the Council of States by the elected members of the Madras Legislative Assembly, the other candidates being respondents 1 to 53. As a result of the poll, respondents 4, 7, 8, 10, 11, 12, 15, 16, 20, 21, 22, 26, 27, 30 to 39, 42, 43, 46 and 51 were declared elected. The petitioner has, therefore, filed this election petition for a declaration that the entire election is void or in the alternative for a declaration that the election of respondent No. 46, Sri V. M. Surendra Ram, is void and that the petitioner has been duly elected as a member to the Council of States.

2. The 46th respondent, Sri Surendra Ram, filed his nomination paper before the Returning Officer and along with it he also produced a certified extract from the electoral roll of the Assembly Constituency in which his name finds a place. They are marked as Exhibit C. It is seen from the extract of the electoral roll which he produced that his age as mentioned therein was 24. Both sides are agreed that this electoral roll was prepared in 1948 so that, if the age given therein is correct he was not more than 28 years of age at the time of the nomination on 14th March, 1952. It must follow that he was not qualified to stand for election to the Council of States in view of Article 84 of the Constitution which provides that a person shall not be qualified to be chosen to fill a seat in the Council of States unless he is "not less than 30 years of age". No objection however, was raised by any of the other candidates that the 46th respondent was not qualified to stand for election. What took place before the Returning Officer at the time of the scrutiny of the nomination paper, is stated thus in paragraph (1) of the statement of the 46th respondent. "At the time of his nomination, he brought to the notice of the Returning Officer the mistake in the entry in the electoral roll regarding his age and it was after he satisfied the Officer on the point and after convincing him that the age as given in his nomination paper was correct, that, the Returning Officer accepted the nomination as valid and his name was included in the list of validly nominated candidates". That this is a correct statement of what happened at the time of scrutiny is not disputed.

3. The nomination paper filed by the 46th respondent gives his date of birth as 12th March 1921 and his age as 31. Whatever may be the exact date of his birth, it is admitted by the learned counsel for the Petitioner that at the time of nomination, the 46th respondent was more than 30 years old. In view of this admission an application made by the 46th respondent to take evidence on Commission regarding his age was dismissed. As stated above no objection was raised before the Returning Officer as regards the age of the 46th respondent. The certificate made by the Returning Officer in the prescribed form on the nomination paper states that "I have scrutinised the eligibility of the candidate, proposer and seconder and find that they are respectively qualified to stand for election, to propose and second the nomination." It is very likely that as no objection was raised by the other candidates, the Returning Officer did not think it necessary to record his reasons for accepting the nomination.

4. The following issues were framed:—

1. Whether the 46th respondent was not validly nominated and the acceptance of his nomination by the Returning Officer was improper?
2. Is the 46th Respondent entitled to prove before the Returning Officer that he was not less than 30 years old and was he in fact of the said age?
3. Whether under section 36(7) of Act XLIII of 1951, the electoral roll is conclusive as regards age?
4. Is the petitioner entitled to be declared elected in place of 46th respondent?
5. Is the election wholly void and liable to be set aside?
6. What order as to costs?

5. It is argued for the petitioner, that having regard to the entry in the electoral roll, a copy of which was produced by the 46th respondent before the Returning Officer and which clearly showed that he was less than 30 years old at the time of nomination, he was not qualified to stand for election and that there was improper acceptance of his nomination by the Returning Officer. It is further argued that the result of the election has been materially affected by the improper acceptance of the nomination and that the election is, therefore, void under section 100(1)(c) of the Representation of the People Act (Act XLIII of 1951)—(which will be referred to as the Act). In the alternative the petitioner claims that the election of the 46th respondent is void and as he (petitioner) obtained the largest number of votes after the 46th respondent he should be declared to have been duly elected. It was stated that on the basis of the number of votes secured by each candidate the 46th respondent was the 27th in rank and the petitioner came next after him as the 28th.

6. The argument for the petitioner is based entirely on Section 36(7)(a) of the Act which enacts that the production of a certified copy of an entry in the electoral roll shall be conclusive evidence of the right of the elector named in that entry to stand for election. It is contended that on a proper construction of this sub-section, the electoral roll is conclusive in regard to the age of a candidate, that the Returning Officer is precluded from going behind the electoral roll and that he ought to have rejected the nomination of the 46th respondent.

7. On the other hand learned Counsel for the 46th respondent referred to the provisions of the Constitution, the Representation of the People Act 1950, the Representation of the People Act 1951 and the rules framed thereunder relating to the qualifications of candidates and voters and preparation of electoral rolls and contended that the electoral roll is not conclusive as regards the age of a candidate and that it is a matter which could be enquired into by the Returning Officer and by the Election Tribunal.

8. The question that has to be decided, therefore, is whether the entry in the electoral roll relating to the age of the 46th respondent is conclusive by reason of the provisions of section 36(7)(a) of the Act or whether notwithstanding such an entry the question of age is open to enquiry by the Returning Officer as well as the Election Tribunal. As mentioned earlier, it is an admitted fact that on the date of nomination, the 46th respondent was more than 30 years old, and if the electoral roll is not conclusive as regards age, it must follow that he was qualified to stand for election and his nomination was valid. Section 36(7) of the Act provides that "For the purpose of this section—(a) the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe a nomination paper as the case may be, unless it is proved that the candidate is disqualified under the Constitution or this Act, or that proposer or seconder as the case may be, is disqualified under sub-section (2) of Section 33;".

9. According to the argument of the learned Counsel for the petitioner, the expression "evidence of the right" means "evidence relating to the right" of an elector to stand for election and from this it is sought to be deduced that the entry in the electoral roll is conclusive as regards all the qualifications which a person must possess in order to be a candidate at an election. It is necessary to observe that the expression used in the sub-section is that the entry is conclusive evidence of the right of the elector named in the entry to stand for election. It does not in terms state that when once an entry in an electoral roll is produced, it is conclusive evidence that the person named in that entry has all the qualifications which a candidate should possess. The fallacy in the argument for the petitioner is that it assumes that all the qualifications required in the case of a candidate, in addition to those which he should possess to be registered as a voter, are comprehended by the term "right to stand for election".

10. An examination of the provisions in the Constitution, the Representation of the People Act XLIII of 1950 and the Rules framed thereunder is necessary to understand the scope and effect of an entry in an electoral roll. Article 84 of the Constitution lays down the qualifications for membership of Parliament and they are that he is (1) a citizen of India; (2) in the case of a seat in the Council of States, not less than 30 years of age and, in the case of a seat in the House of the People, not less than 25 years of age; and (3) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament. Articles 101 and 102 deal with disqualifications for membership, but they are not relevant for the present purpose. As regards qualifications of a voter, Article 326

provides—quoting only the relevant portions—“every person who is a citizen of India and who is not less than 21 years of age on such date as may be fixed in that behalf by or under any Law made by the appropriate Legislature and is not otherwise disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.” The Representation of the People Act XLIII of 1950 was enacted for making provision, among other matters, for the preparation of electoral rolls. Part III deals with registration of Parliamentary electors and Section 19 which is the important Section dealing with conditions for registration provides; “subject to the foregoing provisions of this Part, every person who (a) has been ordinarily resident in a constituency for not less than 180 days during the qualifying period, and (b) was not less than 21 years of age on the qualifying date shall be entitled to be registered in the electoral roll for that constituency.” Section 16 provides “(1) A person shall be disqualified for registration in an electoral roll if he—(a) is not a citizen of India or (b) is of unsound mind and stands so declared by a competent court; or (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt and illegal practices and other offences in connection with elections”. The Representation of the People (Preparation of Electoral Rolls) Rules, 1950 have been framed under this Act. They provide for the preparation of electoral rolls by Electoral Registration Officers, preferring of claims and objections to and decision by a Revising Authority. It is sufficient to refer to rules 17 and 18. The former empowers the Revising Authority to hold a summary enquiry into the claims and objections and to record its decision. Rule 18(1) declares that “the decision of the Revising Authority shall be final”. Form VI is the form in which a claim to be included in the electoral roll has to be made. In column (2) of this Form under the heading “Particulars of claim”, the claimant is required to state “that he is a citizen of India that he was not less than 21 years of age at the relevant date, etc.”. The scope of the enquiry before the Electoral Registration Officer and the Revising Authority is clear from the Statutory provisions referred to above. So far as age is concerned, the only question that has to be considered by the Registration Officer or the Revising Authority is whether a person claiming to be included in an electoral roll is not less than 21 years of age on the qualifying date. The exact age is immaterial and they have no jurisdiction to decide it. All that they have to consider is that the claimant is not less than 21 years of age. The finality which under rule 18 attaches to the decision of a Revising Authority so far as age is concerned, could only be as to the person entered in the electoral roll being not less than 21 years of age.

11. Turning next to the provisions of the Representation of the People Act 1951 (Act XLIII of 1951), Section 3 lays down the qualification for membership of the Council of States and it provides that (1) “A person shall not be qualified to be chosen as a representative of any Part A or Part B State (other than the State of Jammu and Kashmir) in the Council of States unless he is an elector for a Parliamentary Constituency in that State.”

12. We have already referred to the qualifications required in the case of an elector. An essential qualification which a person must possess in order to enable him to stand for election is that his name should find a place in an electoral roll for a Parliamentary Constituency. A person whose name is entered in such a roll has a right to stand for election to the Council of States. By virtue of sub-section (4) of section 39 the provisions of sub-section (1), (3), (4), (5) and (7) of section 33 and sections 34 to 38 are made applicable to elections to the Council of States. The procedure which has to be followed on the presentation of a nomination paper is laid down in section 33(5). Under this sub-section the Returning Officer is required to satisfy himself that “the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper, are the same as those entered in the electoral roll”. The next stage is scrutiny of nominations, and this is dealt with in section 36. Sub-section (2) of that section provides that “The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary refuse any nomination on any of the following grounds:—(a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or (b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act.” It is unnecessary to refer to the remaining sub-clauses of that section. It has to be observed that the provision regarding the conclusive effect of an entry in the electoral roll finds a place in section 36 which deals with scrutiny of nominations.

13. If the argument for the petitioner is sound, it is difficult to see what enquiry the Returning Officer could make at the time of scrutiny, in regard to the qualifications of a candidate. The production of a certified copy of an entry in the electoral roll would be sufficient as regards the qualifications of a candidate and no further enquiry would either be called for or permissible. If that be the case we are unable to see why there should be a provision like the one in section 36(2)(a) which empowers the Returning Officer to hold a summary enquiry and reject the nomination paper of a person on the ground that he is not qualified to fill the seat. It will be unreasonable to hold that the Legislature intended to give conclusive effect to an entry in an electoral roll in regard to a matter which could not have formed the subject matter of enquiry before the Electoral Registration Officer or the Revising Authority at the time of preparation of the electoral roll and which they have no jurisdiction to go into. The exact age of an elector is not a matter which has to be determined before his name is put on the electoral roll. All that is necessary is that he should be not less than 21 years of age. This is a qualification which a candidate must possess in common with an elector and it is fundamental in nature. In addition, a candidate must possess some further qualifications. So far as the latter are concerned the electoral roll cannot be regarded as conclusive. They are matters which could be enquired into by the Returning Officer as well as the Election Tribunal when the question arises for decision. We are, therefore, of opinion that the entry in the electoral roll as regards the age of the 46th respondent is not conclusive and it was open to him to satisfy the Returning Officer that he was in fact more than 30 years of age.

14. The above view is supported by three cases reported in Hammond's Election Cases—Aligarh District East (N.M.R.)—page 56, Aligarh District West (N.M.R.)—page 62, and Golaghat (N.M.R.)—page 375. In these cases the age as entered in the electoral roll was not regarded as conclusive. Evidence was allowed to be adduced on this point and the Commissioners decided the question. The rule then in force was word for word the same as section 36(7)(a) of the Act. It may be observed that under the law as it then stood a candidate for election had to be not less than 25 years of age. In the U.P. Anglo-Indian Constituency Case—(Doabia's Indian Election Cases—Volume II, page 106) the question related to election from an Anglo-Indian Constituency to the U.P. Legislative Council. There are some observations in the judgment in that case which support our view. Referring to the Golaghat case (Hammond's Election Cases—page 375) the Commissioners observed at page 110 "since the question whether a candidate was 25 years of age was not and could not have arisen before the Officer who prepared the roll or the Revising Officer, it is obvious they had no jurisdiction to decide it and the electoral roll could not possibly have been final on that question."

15. For the petitioner, three cases reported in Doabia—Volume I, at pages 55, 69 and 111 were relied on. In all those cases the objection was that a person was wrongly entered as a voter in the electoral roll. It was rightly decided that the candidate's name having been entered in the electoral roll, its correctness could not be questioned. These cases are in no way inconsistent with our view that the electoral roll is not conclusive as regards age. As regards the entry of the name of a particular person as a voter in the electoral roll, it is conclusive under section 36(7)(a) and cannot be questioned before the Returning Officer. It being admitted that the 46th respondent was 30 years of age at the time of nomination, it follows that he was qualified to stand for election and that the acceptance of his nomination paper was proper. In this view, the election of the 46th respondent is not liable to be set aside. The petitioner has not raised any other objection to the validity of the election. The question whether the election was materially affected, which was argued at length for the petitioner, does not arise for consideration.

16. We find, therefore, on issues 1 and 2.—that the 46th respondent was not less than 30 years of age at the time of nomination and that the acceptance of the nomination by the Returning Officer was proper.

On issue 3—We find that the electoral roll is not conclusive as regards age.

On issue 4—We find that the petitioner is not entitled to be declared elected in place of the 46th respondent.

Issue 5—We find this issue in the negative.

Issue 6—In the result the petition is dismissed. The petitioner will bear his own costs and pay the costs of the 46th respondent which we fix at Rs. 500. The other respondents will bear their own costs.

17. In the statement of the 23th respondent, Sri Obul Reddi, who appeared in person, it is alleged that the election is vitiated because in the matter of counting of votes the Returning Officer followed "some other rules which came into force when the election is in progress." In addition to supporting the petitioner, he wished to argue this question which is not one of the points raised by the petitioner. The allegations are very vague. As a respondent it is not open to him to challenge the validity of the election on grounds which are not raised by the petitioner. We, therefore, declined to give him permission to argue this point.

18. In conclusion we have to observe that in view of the importance of the question raised in this case notice under section 89 of the Act was issued to the Advocate-General. It is unfortunate that the Advocate-General did not choose to appear and we had not the benefit of his assistance.

Dictated to the Shorthand Writer and pronounced in open Court, this the 8th day of November 1952.

(Sd.) K. B. VENKATACHALA AYYAR.

(Sd.) SYED IMAMUDDIN.

(Sd.) K. CHANDRASEKHARAN.

P. S. SUBRAMANIAN,  
Officer on Special Duty.